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No. (T)

Supreme Court, U.S.
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In The

Supreme Court of the United States

AMES RENTAL PROPERTY ASSOCIATION,

Petitioner,

vs.

CITY OF AMES, IOWA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Iowa

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. **Whether a municipal zoning ordinance which limits the number of unrelated persons who may live together in a single family dwelling violates the Fourteenth Amendment to the United States Constitution?**

PARTIES TO THE PROCEEDING

Petitioner

Petitioner Ames Rental Property Association is a non-profit corporation operating and existing under the laws of the State of Iowa and is comprised of individuals who own residential real estate within the city limits of Ames, Story County, Iowa. There are neither any parent corporations nor does a publicly held corporation own ten (10) percent or more of Petitioner's stock. Ames Rental Property Association was the Plaintiff in the Iowa District Court proceeding and the Appellant in the Iowa Supreme Court proceeding.

Respondent

Respondent City of Ames, Iowa is a municipal corporation operating and existing under the laws of the State of Iowa. Petitioner is unaware of any corporate affiliations regarding Respondent. Respondent was the Defendant in the Iowa District Court proceeding and the Appellee in the Iowa Supreme Court proceeding.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Authorities	iv
Opinions Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	1
Statement of the Case	3
Reasons Relied On For Allowance Of The Writ	6
I. Societal and cultural evolution of the "traditional family" since 1974 warrants this Court's reconsideration of the *Belle Terre* holding	6
II. A single-family zoning ordinance limiting the number of unrelated persons who may live together is not rationally related to legitimate governmental objectives	15
Conclusion	22

Table of Contents to the Appendix

Opinion of the Iowa Supreme Court, filed July 27, 2007	App. 1
Opinion of the Iowa District Court, filed March 16, 2005	App. 25

TABLE OF AUTHORITIES

Page

CASES

Ames Rental Property Association v. City of Ames, 736 N.W.2d 255 (Iowa 2007) ... 1, 6, 12, 14, 18

Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 52 S. Ct. 443, 76 L. Ed. 815 (1932) 11

Charter Township of Delta v. Dinolfo, 351 N.W.2d 831 (Mich. 1984) 20

City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) 7, 12, 15, 16, 19

City of Santa Barbara v. Adamson, 610 P.2d 436 (Cal. 1980) 20

Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972) 16, 19

Hodel v. Indiana, 452 U.S. 314, 101 S. Ct. 2376, 69 L. Ed. 2d 40 (1981) 16

Hopkins v. Zoning Hearing Bd., 423 A.2d 1082 (Pa. Commw. Ct. 1980) 21

Lyng v. International Union, United Auto., Aerospace and Agric. Implement Workers of America, 485 U.S. 360, 108 S. Ct. 1184, 99 L. Ed. 2d 380 (1988) 15

McMinn v. Town of Oyster Bay, 488 N.E.2d 1240 (N.Y. 1985) 20

Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1923) 15

TABLE OF AUTHORITIES – Continued

Page

Payne v. Tennessee, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991) 10

Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971) 7, 15

Romer v. Evans, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996) 16

State v. Barker, 405 A.2d 368 (N.J. 1979) 21

State Oil Co. v. Khan, 522 U.S. 3, 118 S. Ct. 275, 139 L. Ed. 2d 199 (1997) 10

United States Dep't of Agric. v. Moreno, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973) 15, 16, 17

Village of Belle Terre, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974) ..... *passim*

STATUTES AND RULES

United States Supreme Court Rule 13(1) 1

28 U.S.C. § 1257(a) 1

Fourteenth Amendment, section 1, U.S. Constitution 1

Ames Municipal Code § 29.201(62) 2, 3

OTHERS

Katia Brener, *Belle Terre and Single-Family Home Ordinances: Judicial Perceptions of Local Government and the Presumption of Validity*, 74 N.Y.U.L. Rev. 447 (1999) 13, 20

TABLE OF AUTHORITIES – Continued

Page

Rebecca M. Ginzburg, Note, *Altering "Family": Another Look at the Supreme Court's Narrow Protection of Families In Belle Terre*, 83 B.U.L. Rev. 875 (2003) 12

Janai S. Nelson, Comment, *Residential Zoning Regulations and the Perpetuation of Apartheid*, 43 U.C.L.A.L. Rev. 1689 (1996) 14, 18

OPINIONS BELOW

The July 27, 2007 opinion of the Iowa Supreme Court, whose judgment is herein sought to be reviewed, is reported at: *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007), and is reprinted at page App. 1.

JURISDICTION

The Iowa Supreme Court issued its final decision on July 27, 2007. The above-captioned Petition for Writ of Certiorari is timely pursuant to United States Supreme Court Rule 13(1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, section 1 to the United States Constitution provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor

> deny to any person within its jurisdiction the equal protection of the laws.

Also at issue in this case is a zoning ordinance codified within the Ames Municipal Code; specifically, that provision (i.e., section 29.201(62)) defines a "family" to mean:

> a person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:
>
> (a) Any number of people related by blood, marriage, adoption, guardianship or other duly-authorized relationship;
>
> (b) Three unrelated people;
>
> (c) Two related people and any number of children related to either of them;
>
> (d) Not more than eight people who are:
>
> (i) Residents of a "Family Home" as defined in Section 414.22 of the Iowa code and this ordinance; or
>
> (ii) "Handicapped" as defined in the Fair Housing Act, 42 U.S.C. Section 3602(h) and this ordinance. This definition does not include those persons currently illegally using or addicted to a "controlled substance" as defined in the Controlled Substances Act, 21 U.S.C. Section 802(6).

(e) Not more than five people who are granted a Special Use Permit as a single nonprofit housekeeping unit (a "functional family") pursuant to Section 29.1503(4)(d) of this ordinance.

(i) Exceptions – The definition of a "Family" does not include:

a. Any society, club, fraternity, sorority, association, lodge, combine, federation, coterie, or like organization;

b. Any group of individuals whose association is temporary or seasonal in nature; and

c. Any group of individuals who are in a group living arrangement as a result of criminal offenses.

STATEMENT OF THE CASE

This case is a civil declaratory action involving the claim that Ames Municipal Code section 29.201(62) be declared in violation of the equal protection and taking clauses under the United States and Iowa Constitutions. The case was initiated by Ames Rental Property Association (hereinafter "ARPA"), a non-profit corporation comprised of several individuals who own residential real estate within the city limits of Ames, Story County, Iowa.

ARPA members' properties include several houses that the City of Ames has zoned solely for "single-family dwellings." While many of these houses are sufficiently large to comfortably accommodate far more than three residents, Ames Municipal Code section 29.201(62) prohibits ARPA members from leasing the aforementioned houses, regardless of size, to more than "three unrelated people."

In April 2000, the City of Ames enacted a comprehensive zoning ordinance to regulate the use of real estate within the City's boundaries. In relevant part, the zoning ordinance restricted the use of real estate in areas designated as "Residential Low Density" to "primarily single family dwellings." The Ames Municipal Code further defines a "single family dwelling" as "any building consisting of no more than one dwelling unit, designed for and occupied exclusively by one family." The zoning ordinance defines "dwelling unit" as "any building or portion thereof which contains living facilities, including provisions for sleeping, eating, meal preparation and a bathroom." This dispute centers on the City of Ames's definition of "family," which means, in relevant part, "any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship" or no more than "three unrelated people."

These provisions of the Ames Municipal Code not only prohibit the leasing of a house designated as a single-family dwelling to more than three unrelated

persons, the zoning ordinance also restricts the residential occupancy to no more than three unrelated persons. In other words, even if more than three unrelated persons own a single-family dwelling, the Ames Municipal Code prohibits all owners from residing within the dwelling. As a consequence of this dual prohibition, the City of Ames cited both ARPA members and members' tenants with violations of the zoning ordinance. The Ames Municipal Code's penalty and enforcement remedy provisions for zoning violations include a civil penalty in the amount of five hundred dollars for each violation.

ARPA filed the present action in Iowa state district court, requesting relief in the form of: (1) a declaratory ruling that the zoning ordinance's disparate treatment of related versus unrelated persons violated the Due Process Clauses of the United States and Iowa Constitutions and that the City of Ames's enforcement of the zoning ordinance violated the Takings Clauses of the United States and Iowa Constitutions; (2) the issuance of an injunction, prohibiting the City of Ames from further enforcement of the relevant zoning ordinance provisions; and (3) an award of damages pursuant to 42 U.S.C. § 1983. The City of Ames filed a Motion for Summary Judgment, which the district court granted. The district court concluded the zoning ordinance violated neither the Equal Protection Clauses nor the Takings Clauses of the United States and Iowa Constitutions.

ARPA timely and properly appealed the district court's decision to the Iowa Supreme Court, withdrawing the claim under the Takings Clauses and asserting the zoning ordinance violated the Equal Protection Clauses of the United States and Iowa Constitutions. In a 4-3 decision, the Iowa Supreme Court affirmed the district court decision. *Ames Rental Property Association v. City of Ames*, 736 N.W.2d 255 (Iowa 2007).

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I. Societal and cultural evolution of the "traditional family" since 1974 warrants this Court's reconsideration of the *Belle Terre* holding.

Over thirty-four years ago, this Court examined the constitutionality of a zoning ordinance of similar scope to that involved in the present case. *See Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536, 39 L. Ed. 2d 797 (1974). The Village of Belle Terre enacted an ordinance, which "restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses." *Id.* at 2, 94 S. Ct. at 1537. The ordinance provided, in relevant part, "[a] number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit . . . not related by blood, adoption, or marriage shall be deemed to constitute a family." *Id.* at 2, 94 S. Ct. at 1537-38.

Owners of certain real estate located within the village leased a house to a number of unrelated college students. *Id.* at 2-3, 94 S. Ct. at 1538. The owners and three tenants brought an action, challenging the zoning ordinance on the basis that it violated the Equal Protection Clause of the Fourteenth Amendment and the rights of association, travel, and privacy. *Id.* at 1, 94 S. Ct. at 1537.[2]

Justice Douglas, writing for the majority, recognized that the Belle Terre ordinance was distinct from any prior zoning ordinance the Court previously reviewed. *Id.* at 3, 94 S. Ct. at 1538. Despite the dissimilarity, the Court observed that economic and social legislation, where suspect classes are not implicated, will survive scrutiny under the Equal Protection Clause "if the law be 'reasonable, not arbitrary' and bears 'a rational relationship to a (permissible) state objective.'" *Id.* at 8, 94 S. Ct. at 1540 (quoting *F. S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S. Ct. 560, 561, 64 L. Ed. 989 (1920); *Reed v. Reed*, 404 U.S. 71, 76, 92 S. Ct. 251, 254, 30 L. Ed. 2d 225 (1971)). *See also City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 442, 105 S. Ct. 3249, 3255, 87 L. Ed. 2d 313 (1985) (holding that cases in which heightened review is inapplicable, the Equal Protection Clause simply requires the legislation be rationally related to a legitimate end).

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[2] The Court only reviewed the zoning ordinance under the Equal Protection Clause, finding the record failed to support the remaining constitutional challenges. *Id.* at 7, 94 S. Ct. at 1540.

Concluding that through its zoning enactment Belle Terre sought to achieve legitimate goals, the Court stated:

> [t]he regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by, more cars are parked, noise travels with crowds. A quiet place where yards are wide, people few, and motor vehicle restricted are legitimate guidelines in a land-use addressed to family needs. This goal is a permissible one. . . . The police power is not confined to the elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Village of Belle Terre v. Boraas, 416 U.S. at 9, 94 S. Ct. at 1541.

The dissent in *Belle Terre* began by noting that Belle Terre relied on noise, parking problems, and "attractiveness to families" as goals for the ordinance:

> A variety of justifications have been proffered in support of the village's ordinance. It is claimed that the ordinance controls population density, prevents noise, traffic and parking problems, and preserves the rent structure of the community and its attractiveness to families.

Id. at 18, 94 S. Ct. at 1546 (Marshall, J., dissenting). Justice Marshall agreed that these were legitimate goals: "As I noted earlier, these are all legitimate and substantial interests of government." *Id.*

Justice Marshall explained that the goals were underinclusive and overinclusive because there is no rational relationship between marital or sanguinary bonds and the goals that Belle Terre sought to protect:

> But I think it clear that the means chosen to accomplish these purposes are both overinclusive and underinclusive, and that the asserted goals could be as effectively achieved by means of an ordinance that did not discriminate on the basis of constitutionally protected choices of lifestyle. *The ordinance imposes no restriction whatsoever on the number of persons who may live in a house, as long as they are related by marital or sanguinary bonds – presumably no matter how distant their relationship.* Nor does the ordinance restrict the number of income earners who may contribute to rent in such a household, or the number of automobiles that may be maintained by its occupants. In that sense the ordinance is underinclusive. On the other hand, the statute restricts the number of unrelated persons who may live in a home to no more than two. It would therefore prevent three unrelated people from occupying a dwelling even if among them they had but one income and no vehicles. *While an extended family of a dozen or more might live*

> *in a small bungalow, three elderly and retired persons could not occupy the large manor house next door.* Thus the statute is also grossly overinclusive to accomplish its intended purposes.

Id. at 19, 94 S. Ct. at 1546 (emphasis added). Justice Marshall discussed the logical flaws in the majority's decision. Subsequent changes in what constitutes a traditional family bring these logical flaws into relief.

The zoning ordinance in *Belle Terre* is similar to the one in the present case. Under *Belle Terre*, the decision of the Iowa Supreme Court should be affirmed. However, for the common-sense reason that the relationships of people is not rationally related to a property's use coupled with the legal issues outlined below, the time has come to revisit and reverse *Belle Terre*.

ARPA recognizes this Court approaches "the reconsideration of one of its prior decisions with the utmost caution." *State Oil Co. v. Khan*, 522 U.S. 3, 20, 118 S. Ct. 275, 284, 139 L. Ed. 2d 199 (1997). The doctrine of *stare decisis* reflects "a policy judgment that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *Id.* (quoting *Agostini v. Felton*, 521 U.S. 203, 235, 117 S. Ct. 1997, 2016, 138 L. Ed. 2d 391 (1997)). "Nevertheless, when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'" *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 2609, 115 L. Ed. 2d 720 (1991) (quoting *Smith v. Allwright*,

321 U.S. 649, 665, 64 S. Ct. 757, 765, 88 L. Ed. 987 (1944)). This willingness to reexamine prior precedent is particularly true in "cases involving the Federal Constitution, where correction through legislative action is practically impossible. . . ." *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406-07, 52 S. Ct. 443, 447, 76 L. Ed. 815 (1932) (Brandeis, J., dissenting). As Justice Brandeis observed, "[t]he court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." *Id.* at 407, 52 S. Ct. at 447-48.

This Court's willingness to revisit a prior decision is not limited only to those decisions in which principles have been subjected to trial and error. Rather, as recognized by Justice Marshall, revision may occur due to societal or cultural change.

> Courts, however, do not sit or act in a social vacuum. Moral philosophers may debate whether certain inequalities are absolute wrongs, but history makes clear that constitutional principles of equality, like constitutional principles of liberty, property, and due process, evolve over time; what once was a "natural" and "self-evident" ordering later comes to be seen as an artificial and invidious constraint on human potential and freedom. Shifting cultural, political, and social patterns at times come to make past practices appear inconsistent with fundamental principles upon which American society

> rests, an inconsistency legally cognizable under the Equal Protection Clause. It is natural that evolving standards of equality come to be embodied in legislation. When that occurs, courts should look to the fact of such change as a source of guidance on evolving principles of equality.

City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. at 466, 105 S. Ct. at 3268 (Marshall, J., concurring in judgment in part and dissenting in part) (internal citations omitted).

Additionally, societal norms have dramatically changed since the issuance of the *Belle Terre* decision. When *Belle Terre* was decided, "the typical household consisted of a mother, a father, and children, with one breadwinner and one vehicle." *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d at 266 (Wiggins, J., dissenting). Subsequent to the decision in *Belle Terre* and as a direct result of the changing societal family life norms, there has been a "growth in nontraditional families such as communes, same-sex marriages, reconstituted families due to divorce, single-parent families, non-marital cohabitation, [and] voluntarily childlessness. . . ." Rebecca M. Ginzburg, Note, *Altering "Family": Another Look at the Supreme Court's Narrow Protection of Families In Belle Terre*, 83 B.U.L. Rev. 875, 890 (2003) (quoting William L. Smith, *Families and Communes: An Examination of Nontraditional Lifestyles* 14 (1999)). Longer life expectancies, increases in the number of single and divorced parents, rising housing costs and living

expenses, and an evolution to a high-tech economy, which requires more education, each plays a role in society's transition from the "traditional family." *Id.* at 890-92 (citations omitted). Ordinances like that enacted by the City of Ames zone out a large number of classes of citizens (*e.g.*, the elderly, students, the poor) who cannot afford to live without a roommate or in a co-housing community. *See* Katia Brener, *Belle Terre and Single-Family Home Ordinances: Judicial Perceptions of Local Government and the Presumption of Validity*, 74 N.Y.U.L. Rev. 447, 448 (1999) (stating that "[b]ecause single-family home ordinances with narrow definitions of family tend to zone out low-income individuals who cannot afford to live without roommates or extended family, and because historically, America's poor have been disproportionately ethnic minorities, these ordinances tend to perpetuate class and racial segregation").[3] The elderly, for

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[3] One commenter noted:

> single-family ordinances impose economic constraints, while also reflecting moral judgments about the structure of lower income families by those having wealth and political control. Essentially, single-family ordinances prohibit "nontraditional" families from living in particular areas and thus, among "traditional" families. . . . Data suggests that African Americans comprise a disproportionate number of nontraditional families and are, thus, disproportionately affected by single family ordinances. Such regulations have an increasing exclusionary impact as the percentage of nontraditional families rises overall. In addition, single family ordinances create an economic impediment because fewer unrelated persons are allowed to live

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example, "may find the shared resources, companionship, and assistance available in a co-housing community particularly helpful, especially if they have outlasted their pensions, spouses, and mobility." Ginzburg, *supra*, at 891.

Municipalities, like the City of Ames, claim that zoning ordinances limiting the number of unrelated persons promote a sense of community. This contention begs the question: the question is whose community values are advanced. "Is Ames only interested in promoting traditional families or those who can afford to live in a home without a roommate – the wealthy and the upper-middle class?" *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d at 266 (Wiggins, J., dissenting).

Due to the evolution of society, from the traditional family consisting of a mother, a father, and children to the numerous nontraditional families that have become much more prevalent in today's society, ARPA respectfully requests that this Court grant this Petition, reconsider the *Belle Terre* decision and, for reasons discussed in greater detail below, find single-family zoning ordinances that restrict the number of

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> together, thereby reducing the number of salaried persons that can reside in the same household when such persons do not together constitute a traditional family.

Janai S. Nelson, Comment, *Residential Zoning Regulations and the Perpetuation of Apartheid*, 43 U.C.L.A.L. Rev. 1689, 1700-01 (1996).

unrelated persons who may live together not rationally related to any legitimate governmental interest.

II. A single-family zoning ordinance limiting the number of unrelated persons who may live together is not rationally related to legitimate governmental objectives.

Under the Equal Protection Clause, the legislation or ordinance "must be rationally related to a legitimate governmental purpose." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. at 446, 105 S. Ct. at 3258.[4] Under this standard, the classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. . . ." *Reed v. Reed*, 404 U.S. at 76, 92 S. Ct. at 254 (quoting *Royster Guano Co. v. Virginia*, 253 U.S. at 415, 40 S. Ct. at 561). As such, a governmental entity may not "rely on a classification whose relationship to an

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[4] For purposes of this discussion, ARPA acknowledges that because the zoning ordinance has no substantial impact on any fundamental interest and does not affect with particularity any protected class, the rational basis test is implicated. *Lyng v. International Union, United Auto., Aerospace and Agric. Implement Workers of America*, 485 U.S. 360, 370, 108 S. Ct. 1184, 1192, 99 L. Ed. 2d 380 (1988) (citing *Ohio Bureau of Employment Servs. V. Hodory*, 431 U.S. 471, 489, 97 S. Ct. 1898, 1908, 52 L. Ed. 2d 513 (1977) (*Department of Agric. v. Moreno*, 413 U.S. 528, 533, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973)). *But see Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 626, 67 L. Ed. 1042 (1923) (recognizing that "establishing a home" has long been cherished as one of the fundamental liberties).

asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. at 446, 105 S. Ct. at 3258 (citations omitted). Additionally, if "the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *Romer v. Evans*, 517 U.S. 620, 634-35, 116 S. Ct. 1620, 1628, 134 L. Ed. 2d 855 (1996) (quoting *Department of Agric. v. Moreno*, 413 U.S. at 534, 93 S. Ct. at 2821).

When the challenged statute or ordinance inhibits personal relationships, this Court has been willing to hold that a law is unconstitutional even though social and economic legislation carries a presumption of rationality. *Hodel v. Indiana*, 452 U.S. 314, 331-32, 101 S. Ct. 2376, 2387, 69 L. Ed. 2d 40 (1981). In *Romer v. Evans*, 517 U.S. at 635, 116 S. Ct. at 1629, this Court struck down a Colorado Constitutional amendment which prohibited all legislative, executive, and judicial action designed to protect homosexuals from discrimination on the basis that the amendment was not rationally related "to any identifiable legitimate purpose or discrete objective." Similarly, in *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972), this Court found a Massachusetts statute prohibiting the distribution of contraceptives to single persons, but allowing distribution to married persons, violated the Equal Protection Clause because there was no rational

explanation for the differential treatment between married and unmarried persons.

In *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d (1973), this Court discussed the issue of related versus unrelated individuals residing in a household and concluded that no rational basis supported the distinction. Specifically, this Court was called upon to review a Congressional amendment to the Food Stamp Act that created two separate classes of persons for food stamp purposes: the first class being composed of individuals who reside in the same household and who are related (this class of individuals was eligible to receive food stamp benefits) and the second class being composed of individuals who live in households where one or more members are unrelated (this class of individuals was ineligible to receive food stamp benefits). *Id.* at 529, 93 S. Ct. at 2823. Reviewing the amendment under the Equal Protection Clause, this Court found the legislation to be "wholly without any rational basis." *Id.* at 538, 93 S. Ct. at 2827. The Government asserted that the classification was designed to address a legitimate governmental interest in minimizing food stamp fraud. This Court stated that even if it assumed the Government's unsubstantiated assumption that unrelated persons are more likely to engage in fraud was a rational objective, the denial of the governmental benefit to "all otherwise eligible households containing unrelated members" was not a rational effort to deal with those concerns. *Id.* at 536, 93 S. Ct. at

2826. In reaching its conclusion, the Court relied, in part, on the recognition that many recipients were required to reside with unrelated individuals to "share housing costs" and simply could not alter their living arrangements so as to retain their food stamp eligibility. *Id.* at 537-38, 93 S. Ct. at 2827.

Similarly, in the present case, classifying people by their family relationships is not rationally related to the purported governmental goals. In fact, the classification serves as an insidious means of segregation based on characteristics such as age, race, and affluence.[5] The City of Ames articulated several goals for the zoning ordinance, including: "promot[ing] a sense of community, sanctity for the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency." *Ames Rental Property Ass'n v. City of Ames*, 736 N.W.2d at 260. These purported goals are valid governmental objectives. However, and similar to the *Moreno* holding, distinguishing between related and unrelated individuals is unrelated to the goals. Related persons do not automatically possess any greater support or desire for the sanctity of family than non-related persons, they do not undermine a sense of community, nor do they necessarily possess fewer motor vehicles than related persons. They are not necessarily noisier than related individuals.

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[5] "[Z]oning promotes economic segregation through increased housing costs and disproportionately affects economically disadvantaged classes. . . ." Nelson, *supra*, at p. 1704.

The City's asserted goals are not different from those relied on in *Cleburne Living Center*, in which a municipality denied a special use permit for a group home on the basis that the municipality was attempting to foster the legitimate goals of "avoiding concentration of population," "lessening congestion of the streets," and "serenity of the neighborhood." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. at 450, 105 S. Ct. at 2359-60. This Court recognized that the municipality failed in any manner or respect to impose any limit on the number of residents who were outside the implicated class that may reside in the area and that the municipality failed to rationally justify its singling out of those individuals who fell within the implicated class. *Id.*

This Court's reasoning in *Cleburne Living Center* applies here. The City of Ames contends that the zoning ordinance advances the goal of low population; however, the City of Ames ordinance imposes no limitation on the number of related individuals who may reside in the same household. Ames also asserts that the ordinance is rationally related to the goal of fewer vehicles. As with population, the ordinance imposes no limits on the number of vehicles owned by related residents. The Ames ordinance is both impermissibly overinclusive and underinclusive and constitutes an irrational effort to achieve legitimate goals. *See, e.g., Eisenstadt v. Baird*, 405 U.S. at 454, 92 S. Ct. at 1038 (noting that the governmental classification constituted an invidious underinclusion).

Several state court decisions have likewise concluded single family zoning ordinances limiting the number of unrelated persons residing in a same household violated the Equal Protection Clause of their respective state constitutions.[6] *See McMinn v. Town of Oyster Bay*, 488 N.E.2d 1240, 1243 (N.Y. 1985) (stating that "restricting occupancy of single-family housing based generally on biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance" and finding the ordinance fatally overinclusive and underinclusive); *Charter Township of Delta v. Dinolfo*, 351 N.W.2d 831, 841-42 (Mich. 1984) (holding that while preservation of traditional family values, maintenance of property values, and population and density control are laudable goals, a zoning ordinance which limited the number of unrelated persons who could reside within a dwelling was neither rationally related to the goals nor furthered the goals and was overinclusive and underinclusive); *City of Santa Barbara v. Adamson*, 610 P.2d 436, 441 (Cal. 1980) (holding zoning ordinance which limited the number of non-relatives living in a household violated state constitution and did not advance goals of reducing

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[6] "Courts that have upheld [single-family home ordinances] under their state constitutions generally follow the reasoning of Belle Terre and typically hold that such ordinances are rationally related to the legitimate state interests of promoting family and youth values and preserving the family and marriage." Brener, *supra*, at p. 449.

transients, to advance suitable environment for family life, low density, or noise, traffic, or parking congestion); *State v. Barker*, 405 A.2d 368, 371-72 (N.J. 1979) (holding a zoning ordinance that limited the number of unrelated people allowed to live together unconstitutional as it was not related to effectuating the legitimate goal and because the ordinance was overinclusive); *Hopkins v. Zoning Hearing Bd.*, 423 A.2d 1082, 1085 (Pa. Commw. Ct. 1980) (holding that "there is no rational relationship between the restrictive definition of family in the . . . ordinance and the state interest to preserve the residential character of the neighborhood").

These state court decisions illustrate that modern reality has caught up with the logical flaws in the *Belle Terre* decision. Treating non-relatives differently from relatives in the context of a zoning ordinance does not further legitimate municipal goals because there is no relationship between the classification and the goal. It is, as the dissent in *Belle Terre* discussed, both over- and underinclusive. It is time to revisit this Court's decision in *Belle Terre* and allow property owners to live in or lease property based on objective zoning criteria related to a city's goals rather than on the family relationship of the residents.

Ames Rental Property Association respectfully asks this Court to grant this application for a writ of certiorari and to overturn *Village of Belle Terre v. Boraas*.

CONCLUSION

For the foregoing reasons, Petitioner prays the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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TABLE OF CONTENTS TO THE APPENDIX

Page

Opinion of the Iowa Supreme Court, filed July 27, 2007 ..... App. 1

Opinion of the Iowa District Court, filed March 16, 2005 ..... App. 25

IN THE SUPREME COURT OF IOWA

No. 38/05-0463

Filed July 27, 2007

AMES RENTAL PROPERTY ASSOCIATION,

Appellant,

vs.

CITY OF AMES,

Appellee.

Appeal from the Iowa District Court for Story County, William J. Pattinson, Judge.

Landlord group appeals district court decision holding city's zoning ordinance does not violate equal protection. **AFFIRMED.**

Thomas G. Fisher, Jr. of Parrish Kruidenier Moss Dunn Boles Gribble Cook & Fisher, L.L.P., Des Moines, for appellant.

Kirke C. Quinn of Jordan & Quinn, P.C., Boone, and John R. Klaus, City Attorney, Ames, for appellee.

STREIT, Justice.

In an effort to stem the flow of students into residential areas, Ames, the home of Iowa State University, passed a zoning ordinance which only permits single-family dwellings in certain areas of the city. For purposes of the ordinance, a "family" is any

number of related persons or no more than three unrelated persons. A landlord association brought a declaratory judgment against the City claiming the ordinance violates the equal protection clauses of the United States Constitution and the Iowa Constitution. The district court granted summary judgment in favor of Ames because it found the ordinance was rationally related to a legitimate government interest. We affirm.

I. Facts and Prior Proceedings

Ames Rental Property Association (hereinafter ARPA) is a corporation comprised of people who own residential real estate within the city limits of Ames. The members' properties include various houses located within areas the City has zoned for single-family dwellings. While many of these houses are sufficiently large to comfortably accommodate more than three people, section 29.201(62) of the Ames Municipal Code operates to prohibit ARPA members from leasing a given house, regardless of its size, to more than three unrelated persons.

Chapter 29 of the Ames Municipal Code is a comprehensive and detailed zoning ordinance enacted by the City in April 2000 to regulate the use of real estate within the City's boundaries. Section 29.701(1) restricts use of property in areas designated

"residential low density" zones to "primarily single family dwellings."[1]

Section 29.201(51) defines a single-family dwelling as "any building consisting of no more than one dwelling unit, designed for and occupied exclusively by one family." The term "dwelling unit" is defined as "any building or a portion thereof which contains living facilities, including provisions for sleeping, eating, meal preparation and a bathroom."[2] Ames Mun. Code § 29.201(54).

The controversy in this case focuses on the definition of "family" as provided by section 29.201(62). A "family" means:

> [A] person living alone, or any of the following groups living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:
>
> (a) Any number of people *related* by blood, marriage, adoption, guardianship or

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[1] A two-family dwelling, i.e., a building that contains two dwelling units, each designed for separate and independent occupancy, is allowable in residential low-density zones if it preexisted the enactment of chapter 29. *See* Ames Mun. Code §§ 29.201(53), .701(2).

[2] Excepted from this definition are "hotels, manufactured homes, nursing homes, residential corrections facilities, rooming houses, sororities or fraternities, or supervised group homes." Ames Mun. Code § 29.201(54).

other duly-authorized custodial relationship;

(b) Three *unrelated* people;

(c) Two *unrelated* people and any children *related* to either of them;

. . . .

(Emphasis added.)

ARPA members have been cited with violating the zoning ordinance for renting houses to more than three unrelated persons. Members' tenants have also been cited.

In February 2004, ARPA filed a declaratory judgment in Story County. It requested Ames Municipal Code section 29.201(62), defining "family" for purposes of determining the use of houses within a "single family" zoning district, be declared in violation of the equal protection clauses and the takings clauses of the Iowa Constitution and the United States Constitution. Ames denied ARPA's allegations.

Ames filed a motion for summary judgment. The district court granted Ames's motion and dismissed ARPA's petition. ARPA appealed.

On appeal, ARPA asserts only its equal protection claim under both the Iowa and United States Constitutions.

II. Scope of Review

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Tetzlaff v. Camp*, 715 N.W.2d 256, 258 (Iowa 2006) (citing *Keokuk Junction Ry. v. IES Indus., Inc.*, 618 N.W.2d 352, 355 (Iowa 2000)). ARPA acknowledges there are no facts in dispute. Thus, on review we must determine whether the district court correctly applied the law. *Diggan v. Cycle Sat, Inc.*, 576 N.W.2d 99, 102 (Iowa 1998) (citing *Putensen v. Hawkeye Bank*, 564 N.W.2d 404, 407 (Iowa 1997)). We review constitutional claims de novo. *Grovijohn v. Virjon, Inc.*, 643 N.W.2d 200, 202 (Iowa 2002).

III. Merits

A. Federal Constitution

ARPA argues Ames's zoning ordinance violates both the Iowa and Federal Constitutions. However, the Supreme Court has examined a more restrictive ordinance and held it did not violate the United States Constitution. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S. Ct. 1536, 1541, 39 L. Ed. 2d 797, 804 (1974) (holding a zoning ordinance limiting occupancy of single-family homes to any number of related persons or not more than two unrelated persons does not offend the Equal Protection Clause of the United States Constitution). Undeterred, ARPA argues the Supreme Court will likely overturn *Belle Terre* if given the opportunity to do so. We will not be

so presumptuous as to predict how the Supreme Court would rule if presented with this case. *Belle Terre* is still good law. Ames's zoning ordinance does not violate the Equal Protection Clause of the United States Constitution.

B. Iowa Constitution

Nevertheless, we must still consider the ordinance under the Iowa Constitution. While the Supreme Court's judgment under the federal Equal Protection Clause is persuasive, it is not binding on this court as we evaluate the City's ordinance under the Iowa Constitution. *Racing Ass'n of Cent. Iowa v. Fitzgerald,* 675 N.W.2d 1, 5 (Iowa 2004).

The Iowa Constitution guarantees "[a]ll laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const. art. 1, § 6. This provision "means similarly situated persons must receive similar treatment under the law." *Grovijohn,* 643 N.W.2d at 203-04 (citations omitted).

The first step of an equal protection claim is to identify the classes of similarly situated persons singled out for differential treatment. *Id.* at 204. Here, the classes are related persons versus unrelated persons living in Ames's single-family zones. ARPA members allege Ames's ordinance violates the

rights of their tenants and would-be tenants to equal protection.[3]

If the claimed dissimilar treatment does not involve a suspect class or a fundamental right, any classification made by the statute need only have a rational basis. *Id.* ARPA concedes "[t]he district court properly concluded that the rational basis test should be applied." *See Belle Terre,* 416 U.S. at 6-7, 94 S. Ct. at 1539-40, 39 L. Ed. 2d at 802-03 (finding zoning ordinance limiting number of unrelated persons per household involved neither a suspect class nor a fundamental right); *State v. Seering,* 701 N.W.2d 655, 664 (Iowa 2005) (stating freedom of choice in

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[3] Normally, a party may only assert his own rights. *Krull v. Thermogas Co.,* 522 N.W.2d 607, 614 (Iowa 1994). However, there is an exception to this general rule where the challenger's interest is as great as the persons whose rights are alleged to be violated. *Id.* Here, ARPA members have a legitimate interest in Ames's ordinance because they are being fined for violating the ordinance and presumably the ordinance makes the homes more difficult to rent. A direct economic injury through constriction of the market and imposition of sanctions is a sufficient injury to satisfy standing. *Craig v. Boren,* 429 U.S. 190, 194, 97 S. Ct. 451, 455, 50 L. Ed. 2d 397, 405 (1976) (holding bar owner had standing to challenge state statute prohibiting males under the age of twenty-one from buying 3.2% beer while permitting the sale to women ages eighteen years and older because the bar owner incurred a "direct economic injury"). Thus, ARPA members have standing in representative capacity to raise the potential rights of unrelated persons affected by Ames's ordinance. *Krull,* 522 N.W.2d at 614; *see also Sierra Club v. Morton,* 405 U.S. 727, 739, 92 S. Ct. 1361, 1368, 31 L. Ed. 2d 636, 645 (1972) (stating an organization whose members are injured may represent those members in a lawsuit).

residence "is not a fundamental interest entitled to the highest constitutional protection").

Under the rational basis test, we must determine whether the ordinance in question is rationally related to a legitimate governmental interest. *Racing Ass'n of Cent. Iowa,* 675 N.W.2d at 7-8. Under this deferential standard, the zoning ordinance is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious. *Id.* at 8. A statute or ordinance is presumed constitutional and the challenging party has the burden to "negat[e] every reasonable basis that might support the disparate treatment." *Id.* The City is not required or expected to produce evidence to justify its legislative action. *Heller v. Doe by Doe,* 509 U.S. 312, 320, 113 S. Ct. 2637, 2643, 125 L. Ed. 2d 257, 271 (1993). "A legislative judgment is presumed to be supported by facts known to the [city council], unless facts judicially known or proved preclude that possibility." *Egan v. United States,* 137 F.2d 369, 375 (8th Cir.1943) (citations omitted).

In the context of zoning, legitimate government interests include "promoting the health, safety, morals, or the general welfare of the community." Iowa Code § 414.1 (2003). Here, Ames articulated several bases for the zoning ordinance: "promot[ing] a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency." In *Belle*

Terre, the Supreme Court found similar interests valid:

> The police power is not confined to the elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Belle Terre, 416 U.S. at 9, 94 S. Ct. at 1541, 39 L. Ed. 2d at 804. We agree governing bodies have a legitimate interest in promoting and preserving neighborhoods that are conducive to families-particularly those with young children. *See Moore v. City of E. Cleveland,* 431 U.S. 494, 503, 97 S. Ct. 1932, 1938, 52 L. Ed. 2d 531, 540 (1977) (noting the Supreme Court's prior decisions established the Federal Constitution "protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition"); *Callender v. Skiles,* 591 N.W.2d 182, 191 (Iowa 1999) (acknowledging "promoting the sanctity and stability of the family" is a legitimate government interest). Quiet neighborhoods with a stable population and low traffic are laudable goals. Ames's objectives are therefore valid.

Next, we must determine whether the City's objectives are "rationally related" to the zoning ordinance in question. ARPA argues the ordinance "does not address the purposes relied upon by the city." ARPA explains:

> [A]ny legitimate goal that the City seeks to achieve can be achieved by a narrower, more direct ordinance. The ordinance as it is presently adopted is under-inclusive because it allows related individuals to live in large numbers in small areas and create noise, litter, and use or park an excessive number of cars. At the same time it is over-inclusive because it prohibits unrelated residents who might live in quite reasonable numbers for the square footage of the house and not create noise, litter, and may not use or park an excessive number of cars.

However, under the rational basis test, we do not require the ordinance to be narrowly tailored. "If the classification has some 'reasonable basis,' it does not offend the constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'" *Scott County Prop. Taxpayers Ass'n, Inc. v. Scott County,* 473 N.W.2d 28, 31 (Iowa 1991) (quoting *United States R.R. Retirement Bd. v. Fritz,* 449 U.S. 166, 175, 101 S. Ct. 453, 459, 66 L. Ed. 2d 368, 376 (1980)). For legislation to be violative of the Iowa Constitution under the rational basis test, the classification must involve "*extreme* degrees of overinclusion and underinclusion in relation to any particular goal." *Racing Ass'n of Cent. Iowa,* 675 N.W.2d at 10 (emphasis added).

This requires more than imagining extreme examples of groups of people who do or do not offend

the goals of the zoning ordinance. Sure, the ordinance would allow the Beverly Hillbillies[4] to live in a single-family zone while prohibiting four judges from doing so. However, neither hypothetical is typical of reality.[5] City council members are permitted to legislate based on their observations of real life.

In the present case, we find the relationship between the ordinance and the City's goals is neither arbitrary nor capricious. Quite candidly, Ames states "[i]t cannot be ignored that Ames is a university campus city and, therefore, experiences typical secondary effects of mass student congestion."[6] Based on its experience with students living off campus, the

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[4] The Beverly Hillbillies was a popular sitcom on CBS from 1962 through 1972. The show's main character was an Ozarks mountaineer who struck it rich upon the discovery of oil on his land. Thereafter, he moved to Beverly Hills with his mother-in-law, his daughter, and his nephew. High jinks ensued when the clan refused to conform to privileged society.

[5] Offering examples of overinclusion and underinclusion, ARPA stated "a fifteen-member family could live in a tiny one-bedroom house with fifteen cars parked in the streets and driveways, while four unrelated people cannot live in a fifteen bedroom house with no cars at all."

[6] Many of the cases addressing similar ordinances involve college towns. *See State v. Champoux*, 555 N.W.2d 69 (Neb. Ct. App. 1996) (Lincoln, Nebraska, home of the University of Nebraska); *Town of Durham v. White Enters., Inc.* 348 A.2d 706 (N.H. 1975) (Durham, New Hampshire, home of the University of New Hampshire); *City of Brookings v. Winker*, 554 N.W.2d 827 (S.D.1996) (Brookings, South Dakota, home of South Dakota State University); *Anderson v. Provo City Corp.*, 108 P.3d 701 (Utah 2005) (Provo, Utah, home of Brigham Young University).

Ames city council made a reasonable policy decision to limit to three the number of unrelated persons who may reside in a single-family dwelling in certain areas. It did so because groups of unrelated persons typically have different living styles in comparison to groups of related persons. *See Dinan v. Bd. of Zoning Appeals*, 595 A.2d 864, 870 (Conn. 1991) (noting a group of college students is less likely to become involved in the neighborhood and community in comparison to a typical family because of its short-term living arrangement). For example, although related persons may live together in large numbers, they normally live together in a more permanent status and remain in one place for a longer period of time. In contrast, groups of unrelated persons typically live together as roommates. Such arrangements are relatively short term and normally involve young adults. These persons tend not to establish roots in the community nor do they provide playmates for their neighbors' children. Moreover, large numbers of young adults living together typically attract friends, which create additional noise and traffic. By limiting the number of unrelated persons who may live together, Ames's ordinance furthers the City's goal of creating family-oriented neighborhoods that are safe and quiet for young children. It is also reasonable for the city council to conclude density will be lessened by the ordinance. Therefore, Ames's ordinance does

not violate the equal protection clause of the Iowa Constitution.[7]

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[7] *See Jones v. Wildgen*, 320 F. Supp. 2d 1116, 1131-32 (D.Kan.2004) (holding statute prohibiting more than three unrelated persons from renting home in single-family zoning district does not violate the Equal Protection Clause of the United States Constitution); *Rademan v. City & County of Denver*, 526 P.2d 1325, 1327-28 (Colo. 1974) (holding ordinance restricting certain areas of the city to single-family occupancy does not violate the Equal Protection or Due Process clauses of the Federal Constitution); *Dinan*, 595 A.2d at 871 (holding ordinance which allows any number of related persons to occupy a home and up to two roomers in addition to the family of an occupant does not violate the equal protection or due process clauses of the Connecticut Constitution); *Hayward v. Gaston*, 542 A.2d 760, 770 (Del.1988) (holding ordinance which prohibits more than four unrelated persons from living together in single-family residential zone does not violate the Equal Protection Clause of the Federal Constitution); *Champoux*, 555 N.W.2d at 74 (holding ordinance limiting to three the number of unrelated persons who may live together does not violate the due process clause of the Nebraska Constitution or the rights of association and privacy provided by the Federal Constitution); *Town of Durham*, 348 A.2d at 709 (holding ordinance which restricts the number of unrelated persons who may live in different classes of dwelling units based on habitable square footage is constitutional); *City of Brookings*, 554 N.W.2d at 831-32 (holding ordinance which prohibits more than three unrelated adults to occupy a dwelling unit does not violate either equal protection or due process clauses of the South Dakota Constitution); *see also Anderson*, 108 P.3d at 710 (holding zoning ordinance which allows property owners in some single-family zoning residential zones near university campus to rent accessory apartments (located in basement or upper floors) to up to four related or unrelated individuals on condition owner resides in primary dwelling does not violate owners' constitutional right to equal

(Continued on following page)

Certainly this ordinance is imprecise and based on stereotypes. Nevertheless, it is a reasonable attempt to address concerns by citizens who fear living next door to the hubbub of an "Animal House."[8] Significantly, the ordinance is not limited to college students nor does it bar them from living in single-family zones. The City's definition of "family" is quite flexible and expansive enough to encompass unmarried couples and groups of three unrelated persons. *See Champoux,* 555 N.W.2d at 74 (noting ordinance prohibiting four or more unrelated persons from living together "is expansive enough to allow numerous other household relationships in addition to that of the traditional family"). Other cases striking down ordinances which limit the number of unrelated persons who may live together have done so applying other constitutional provisions, using a heightened level of scrutiny, or addressing a more restrictive ordinance.[9] ARPA only challenges the ordinance on

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protection or right to travel, and is not an invalid restraint on alienation).

[8] *See* Animal House (Universal Pictures 1978) (depicting the hilarious missteps and misdeeds of the Delta House fraternity members at Faber College). The City's definition of "family" specifically excludes "[a]ny society, club, fraternity, sorority, association, lodge, . . . or like organization." Ames Mun. Code § 29.201(62)(e)(i)(a).

[9] *See City of Santa Barbara v. Adamson,* 610 P.2d 436, 442 (Cal. 1980) (holding ordinance limiting to five the number of unrelated people who may live in single-family zones violates fundamental right to privacy under the California Constitution); *College Area Renters & Landlord Ass'n v. City of San Diego,* 50 Cal. Rptr. 2d 515, 520 (Ct. App. 1996) (holding zoning ordinance

(Continued on following page)

equal protection grounds and agrees rational basis is the proper standard. *See Racing Ass'n of Cent. Iowa,* 675 N.W.2d at 5 (applying the same analysis under the state equal protection provision as applied under the federal equal protection clause but reserving the right to employ a different analytical framework under state constitutional provisions).

ARPA may be correct that this ordinance will do little to further the City's goals. Nevertheless, it is the City's prerogative to fashion remedies to problems affecting its residents. If the ordinance proves to be

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which limited the number of adult occupants of a rented one-family dwelling based on square footage of bedroom areas, the number and size of bathrooms, and the amount of off-street parking violates the equal protection clause of the California Constitution because the ordinance makes an irrational distinction between tenant-occupants and owner-occupants); *Charter Twp. of Delta v. Dinolfo,* 351 N.W.2d 831, 841 (Mich. 1984) (holding ordinance which limits the occupation of a single-family residence to two unrelated persons or any number of related persons violates the due process clause of the Michigan Constitution); *State v. Baker,* 405 A.2d 368, 369-70 (N.J. 1979) (holding zoning ordinance which allows any number of related persons to live together in a single-family home or not more than four unrelated persons violates right to privacy and due process under the New Jersey Constitution because the distinction between related and unrelated persons does not bear a *substantial relationship* to the effectuation of the city's goal of preserving family character of neighborhood); *McMinn v. Town of Oyster Bay,* 488 N.E.2d 1240, 1243 (N.Y. 1985) (holding single-family zoning ordinance allowing any number of related persons to live together or not more than two unrelated persons who both must be 62 years of age or older violates due process clause of the New York Constitution).

ineffective, then the elected city council may change course and amend or repeal it. The court's power to declare a statute or ordinance unconstitutional is tempered by the court's respect for the legislative process. Under the rational basis test, we must generally defer to the city council's legislative judgment. The Supreme Court has said:

> The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational.

Vance v. Bradley, 440 U.S. 93, 97, 99 S. Ct. 939, 942-43, 59 L. Ed. 2d 171, 176 (1979); *accord State v. Simmons,* 714 N.W.2d 264, 277 (Iowa 2006).

IV. Conclusion

We find Ames's zoning ordinance, which allows an unlimited number of related persons to live together while limiting to three the number of unrelated persons in single-family zones, is rationally related to the government's interest in providing quiet neighborhoods. Accordingly, it does not offend

the equal protection clause of either the Iowa Constitution or the United States Constitution.

AFFIRMED.

All justices concur except Wiggins, Hecht, and Appel, JJ., who dissent.

WIGGINS, Justice (dissenting).

I respectfully dissent. I agree Ames Municipal Code section 29.201(62) does not violate the Equal Protection Clause of the United States Constitution. However, I disagree with the majority's conclusion that the ordinance does not violate the equal protection clause of the Iowa Constitution.

The majority relies on *Village of Belle Terre v. Boraas,* 416 U.S. 1, 9, 94 S. Ct. 1536, 1541, 39 L. Ed. 2d 797, 804 (1974), to validate Ames's purpose behind legislating section 29.201(62). However, it is the exclusive prerogative of this court, not the United States Supreme Court, to determine the constitutionality of Iowa statutes challenged under the Iowa Constitution. *Callender v. Skiles,* 591 N.W.2d 182, 187 (Iowa 1999). "[T]his court's independent application of the rational basis test might result in a dissimilar outcome from that reached by the Supreme Court in considering the federal constitutional claim." *Racing Ass'n of Cent. Iowa v. Fitzgerald,* 675 N.W.2d 1, 6 (Iowa 2004). Even if the Iowa Constitution and the United States Constitution are similarly or

identically phrased we can independently consider constitutional arguments and decline to follow United States Supreme Court precedent. *Id.* (citing William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights,* 90 Harv. L. Rev. 489, 500 (1977)). "This result is particularly possible in view of 'the ill-defined parameters of the equal protection clause.'" *Id.* (quoting *Miller v. Boone County Hosp.,* 394 N.W.2d 776, 781 (Iowa 1986)).

In analyzing an equal protection challenge under the Iowa Constitution we must first determine whether the Ames city council had a valid reason to treat related persons differently from unrelated persons in its zoning ordinance. *Id.* at 7. In doing so, we must not only ask whether the ordinance serves a legitimate government purpose, but also whether the claimed state interest is realistically conceivable. *Id.* Second, we must decide whether the city's claimed reason has a basis in fact. *Id.* at 8. Lastly, we must consider whether the relationship between the classification, i.e., the differences between related and unrelated persons, and the purpose of the classification is so weak that the classification must be viewed as arbitrary. *Id.*

Under the Iowa Constitution we employ an overinclusive-underinclusive dichotomy analysis to determine whether legislation survives rational basis scrutiny. *Compare id.* at 10 (finding the legislative purpose behind a taxation provision cannot withstand rational basis review because of the extreme degrees of overinclusion and underinclusion), *and Bierkamp*

v. Rogers, 293 N.W.2d 577, 584 (Iowa 1980) (finding a classification based on extreme degrees of overinclusion and underinclusion cannot pass rational basis review), *with Vance v. Bradley,* 440 U.S. 93, 108, 99 S. Ct. 939, 948, 59 L. Ed. 2d 171, 183 (1979) (demonstrating the United States Supreme Court's tolerance for laws that are overinclusive and underinclusive when conducting a rational basis review). If we find "a classification involves extreme degrees of overinclusion and underinclusion in relation to any particular goal," then that provision fails rational basis review. *Bierkamp,* 293 N.W.2d at 584; *see also Racing Ass'n of Cent. Iowa,* 675 N.W.2d at 10. For reasons stated below, I find Ames's zoning ordinance contains extreme degrees of overinclusion and underinclusion. Accordingly, the ordinance violates the equal protection clause of the Iowa Constitution.

As the majority states, Ames's purpose in treating related persons differently from unrelated persons is to "'promot[e] a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles and controlled transiency.'" Although Ames has a legitimate purpose in promoting the quality and character of its neighborhoods, I cannot accept that distinguishing between related and unrelated persons in a zoning law is rationally related to the promotion of a sense of community, sanctity of the family, quiet and peaceful neighborhoods, low population, limited congestion of motor vehicles, and controlled transiency.

Ames contends these interests will be advanced if groups of more than three unrelated persons are not allowed to live in a home together. However, the record is devoid of any evidence or argument that a group of more than three related persons will portray different or desirable behavior or living patterns than a group of more than three unrelated persons.

I find the ordinance regulates where no regulation is needed and fails to regulate where regulation is needed. The ordinance is both overinclusive and underinclusive. Further, the degree to which this over- and under-inclusiveness is present is extreme because it is irrational to suppose the type of relationship persons residing in a home have to each other has any rational bearing on the character or behavior of those persons. *See Charter Twp. of Delta v. Dinolfo*, 351 N.W.2d 831, 841-42 (Mich. 1984) (holding with regard to a similar housing provision "[a] greater example of over- and under-inclusiveness we cannot imagine"). This irrationality and the extreme over- and under-inclusiveness of the ordinance is easily illustrated by examining family and societal dynamics in the twenty-first century.

Families today, especially ones with teenagers, are just as likely as a group of unrelated persons to have numerous vehicles parked outside their home. In fact, in a college community like Ames, students, the unrelated persons most targeted by the ordinance, are more likely to rely on alternative means of transportation – public transportation, foot, or bicycle – than a vehicle. "Manifestly, restricting occupancy of

single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance." *McMinn v. Town of Oyster Bay,* 488 N.E.2d 1240, 1243 (N.Y. 1985) (citing *Moore v. City of East Cleveland,* 431 U.S. 494, 499-500, 97 S. Ct. 1932, 1935-36, 52 L. Ed. 2d 531, 537-38 (1977); *City of Santa Barbara v. Adamson,* 610 P.2d 436, 441 (Cal. 1980); *State v. Baker,* 405 A.2d 368, 373 (N.J.1979)).

Further, it is irrational to relate a peaceful neighborhood with a neighborhood populated solely by families, or three or less unrelated persons. As another court has articulated under a similar ordinance, "twenty male cousins could live together, motorcycles, noise, and all, while three unrelated clerics could not." *Charter Twp. of Delta,* 351 N.W.2d at 841. Or, that an ordinance of this type would prohibit a group of four unrelated "'widows, widowers, older spinsters or bachelors or even of judges' from residing in a single unit within the municipality." *Baker,* 405 A.2d at 371 (quoting *Kirsch Holding Co. v. Borough of Manasquan,* 281 A.2d 513, 517 (N.J. 1971)).

This ordinance also has no rational relationship to population control. A family of any size can reside in a home in Ames, whereas only three unrelated persons can live together. The majority does not cite to any evidence that supports its conclusion that population "density will be lessened by the

ordinance." Instead, it seems to this dissenter that it is irrational and contradictory to find the ordinance, which allows one group to house an unlimited number of related persons, would in any way reduce the overall population density.

Further, it is irrational to suppose this ordinance promotes a quiet and peaceful neighborhood. This ordinance does not distinguish between a raucous family that plays loud music at their home, has large parties at their home, and houses more vehicles than persons living in their home, and a house of four single, quiet, homebodies whose only knowledge of wild parties and loud music comes from watching television. As another court summarizes, housing ordinances of this sort create an irrational discrepancy in treatment because a tenant-occupied house whose "residents happen to be the quiet, neat type who use bicycles as their means of transportation" are subject to the ordinance; "whereas the owner-occupied house is not subject to the ordinance, even though its residents happen to be of a loud, litter-prone, car-collecting sort." *Coll. Area Renters & Landlord Ass'n v. City of San Diego,* 50 Cal. Rptr. 2d 515, 521 (Cal. Ct. App. 1996).

In today's modern society families are more mobile, especially in a college community, where professors, visiting professors, graduate students, and administrators are frequently moving to new universities to continue or further their studies and careers. These university families come in and out of Ames, yet under this ordinance their transitory nature is

not a factor. *See City of Des Plaines v. Trottner,* 216 N.E.2d 116, 119 (Ill. 1966). The majority dismisses this fact and finds students or other unrelated persons are the only transitory or mobile residents in a university town.

Instead of promoting families, this ordinance disadvantages those most likely to live with roommates – the poor and the elderly. *See Holy Name Hosp. v. Montroy,* 379 A.2d 299, 302 (N.J. 1977). The ordinance distinguishes between acceptable and prohibited uses of property by reference to the type of relationship a person has with those they live with, not by the conduct of those that live in the residence.

Ames claims it is promoting a sense of community with this ordinance. But whose community is Ames promoting? Is Ames only interested in promoting traditional families or those who can afford to live in a home without roommates – the wealthy and the upper-middle class? It is irrational for a city to attempt to promote a sense of community by intruding into its citizens' homes and differentiating, classifying, and eventually barring its citizens from the community solely based on the type of relationship a person has to the other persons residing in their home.

Although the majority may classify these examples of overinclusive and underinclusive applications of the ordinance as extreme, they do so in the context of social norms as they existed thirty-three years ago when the Supreme Court decided *Belle Terre.* In that

era the typical household consisted of a mother, a father, and children, with one breadwinner and one vehicle. In today's society this is no longer the case. Today it is not unusual to see a group of unrelated single persons living together and sharing expenses. The simple fact is that in today's modern society the overinclusive and underinclusive examples identified in this dissent and by other courts that have found similar ordinances unconstitutional are closer to the norms than to the extremes.

If Ames wants to regulate population it can do so by reference to floor space and facilities. Noise and conduct can be controlled with nuisance and criminal laws. Traffic and parking can be controlled by limiting the number of vehicles to all households or with off-street parking regulations. *See Coll. Area Renters & Landlord Ass'n,* 50 Cal. Rptr. 2d at 521.

In sum, I find the ordinance does not reasonably and rationally further Ames's stated legislative goal and is therefore unconstitutional under Iowa law.

Hecht and Appel, JJ., join this dissent.

IN THE IOWA DISTRICT COURT
FOR STORY COUNTY

AMES RENTAL PROPERTY ASSOCIATION, Plaintiff, vs. CITY OF AMES, Defendant.	No. EQCV041531 **SUMMARY JUDGMENT RULING** (Filed Mar. 16, 2005)

The City of Ames has asked, via a summary judgment motion; that this lawsuit be terminated in the City's favor. The City claims that there are no genuine factual disputes that would otherwise require a trial and the City further alleges that it is entitled to judgment as a matter of law. Ames Rental Property Association resists the City's motion.

After considering the parties' summary judgment record in light of their written and oral arguments, and after reviewing all pertinent legal authority, I have concluded that the City is entitled to summary judgment in its favor. Accordingly, this lawsuit will be dismissed. My reasoning is as follows:

Plaintiff Ames Rental Property Association (ARPA) is a corporation comprised of several people who own residential real estate within the city limits of Ames. Those properties include various houses located within areas that the City has zoned solely for single-family dwellings. While many of these houses

are sufficiently large to comfortably accommodate far more than three people, § 29.201(62) of the Ames Municipal Code (A.M.C.) operates to prohibit ARPA members from leasing a given house, regardless of its size, to more than three unrelated individuals. ARPA brought this lawsuit to challenge the constitutionality of § 29.201(62), A.M.C.

Chapter 29 of the Ames Municipal Code is a comprehensive and detailed zoning ordinance enacted by the City in April 2000 to regulate the use of real estate within the City's boundaries. § 29.701, A.M.C., restricts use of property in areas designated as "Residential Low Density (RL)" zones to "primarily single family dwellings"[1] § 29.701(1), A.M.C.

§ 29.201(51), A.M.C., defines a single-family dwelling as "any building consisting of no more than one dwelling unit, designed for and occupied exclusively by one family." *Id.* The term dwelling unit is defined as "any building or a portion thereof which contains living facilities, including provisions for sleeping, eating, meal preparation and a bathroom."[2] § 29.201(54), A.M.C.

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[1] A two-family dwelling, i.e. a building that contains two dwelling units, each designed for separate and independent occupancy, is allowable in residential low-density zones if it preexisted enactment of Chapter 29. See table, § 29.701(2), and § 29.201(52), A.M.C.

[2] Excepted from this definition are "hotels, manufactured homes, nursing homes, residential corrections facilities, rooming

(Continued on following page)

The controversy in this case focuses on the definition of "family" as provided by § 29.201(62), A.M.C., and as used in Chapter 29. Under § 29.201(62), the term "family" includes only "a person living alone, or any of the following groups living together as a single non-profit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities: (a) any number of people related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship; (b) three unrelated people . . . " *Id.*[3] Theoretically, this definition would allow ten *related* people to legally occupy the very same dwelling that only three *unrelated* people could inhabit without fear of sanctions.[4]

ARPA thinks that the zoning ordinance's disparate treatment of groups of related versus unrelated people is so arbitrary and irrational that ARPA members are denied their constitutional right to equal protection of the law. Accordingly, ARPA seeks a declaratory ruling that the restrictions in occupancy

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houses, sororities or fraternities, or supervised group homes." § 29.201(54). A.M.C.

[3] § 29.201(62) includes three other categories of people within the definition of "family" but those groupings are not at issue here.

[4] Article 16 of Chapter 29, A.M.C., sets out various penalties and enforcement remedies for violations of the City's zoning regulations. Those sanctions include civil penalties of $500 for each violation, and the City has apparently imposed such penalties on one or more ARPA members for leasing a single-family dwelling to more than three unrelated individuals.

entailed by § 29.201(62) violate the Equal Protection Clause of the United States Constitution's Fourteenth Amendment and its equivalent provision found in the Constitution of the State of Iowa at Article I, Section 6.

Further, ARPA maintains that the City's enforcement of the pertinent provisions of Chapter 29, A.M.C., violates the "Takings" clauses of both the state and federal constitutions.

Additionally, ARPA seeks an injunction that will prohibit the City from further enforcement of the pertinent provisions of Chapter 29, A.M.C.

Finally, ARPA asks for an award of damages, including attorneys' fees and costs, pursuant to Section 42 USC, Section 1983. The latter claim is premised on ARPA's belief that the City's zoning ordinance and the City's enforcement thereof has deprived ARPA's members of rights, privileges and/or immunities secured by the state and/or federal constitutions.

I. *Summary Judgment Procedure, Generally.* Summary judgment procedure is designed to resolve lawsuits without the cost of an unnecessary trial. See, *Neco, Inc. v. Christenson,* 312 N.W.2d 559, 560 (Iowa 1981). Summary judgment is allowable if the pending claim presents no genuine and material fact issues and the moving party is entitled to judgment as a matter of law. See, Rule 1.981, I.R.Civ.P.; *Porter v. Good Eavespouting,* 505 N.W.2d 178, 182 (Iowa 1993).

Both parties in this case recognized that the merits of the case turned primarily on the law as opposed to the facts. Accordingly, the case was submitted in the procedural format of a motion for summary judgment offered by the City of Ames.

I agree that there are no fact issues in this case that require assessment or determination by a judge or jury. In other words, no trial is needed. The remaining analysis then deals with whether the City of Ames is entitled to a judgment as a matter of law. I find that it is.

II. *Zoning Ordinances, Generally.* Zoning ordinances entail a municipality's exercise of the police powers delegated to it by the State of Iowa. See, *Neuzil v. City of Iowa City,* 451 N.W.2d 159, 163 (Iowa 1990). § 414.1(1), Code of Iowa, empowers a city to "regulate and restrict" the use of land and improvements thereon within the city's boundaries "for the purpose of promoting the health, safety, morals, or the general welfare of the community." *Id.*; see, *Shriver v. City of Okoboji,* 567 N.W.2d 397, 400 (Iowa 1997).

City zoning ordinances enjoy a strong presumption of validity, and one who challenges an ordinance has the burden to rebut that presumption and to demonstrate the ordinance's invalidity. *Shriver,* supra, at 401. "To carry this burden, the challenger must show the ordinance is unreasonable, arbitrary, capricious or discriminatory, with no reasonable relationship to the promotion of public health, safety,

or welfare." *Id.* Additionally, a court cannot substitute its own judgment for that of the city council by assessing the ordinance's wisdom or propriety or the lack thereof. *Neuzil,* supra, at 166. If an ordinance is facially valid and its reasonableness is fairly debatable, a court may not interfere with the city's exercise of its police powers. *Id.*

III. *Equal Protection – United States Constitution.* Plaintiff ARPA claims that the occupancy limit classification (related people vs. unrelated people) found in § 29.201(62), both facially and as applied to ARPA members, violates ARPA members' right to equal protection of the law. While there may have been some arguable procedural and/or substantive impediments to ARPA's ability to advance these claims, the parties appear to have elected to address the case on its merits. That I will do.

The Fourteenth Amendment to the United States Constitution directs that no state shall "deny to any person within its jurisdiction the equal protection of the laws." *Id.*; *City of Cleburne, Texas v. Cleburne Living Center,* 473 US 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). In essence, this equal protection clause mandates that all persons who are similarly situated must be treated in the same fashion. *Id.* Treatment of dissimilarly situated persons in a dissimilar manner by the government does not violate the Equal Protection Clause. *Keevan v. Smith,* 100 F.3d 644, 648 (8th Cir. 1996).

When a court is called upon to assess the constitutionality of a legislatively-created classification of people, the court must use differing levels of "scrutiny," depending on the nature of the classification imposed or the right affected. Classifications that are based explicitly on race, color, or national origin and classifications that impinge on fundamental rights will be "strictly" scrutinized and will be found constitutional only if the classifications are narrowly drawn measures that advance compelling governmental interests.[5] See, *Adarand Constructors. Inc. v. Pena,* 515 U.S. 200, 227, 115 S.Ct. 2097, 2113 (1995); *Sanchez v. State*, ___ N.W.2d ___, 2005 WL 387546, page 3 (Iowa 2005).

If the statute or ordinance's classification is drawn on the basis of gender or legitimacy, the classification's constitutionality will be examined using "intermediate scrutiny" and the classification will only be upheld if it is substantially related to an important state interest. *Id.* "Classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren,* 429 U.S. 190, 197, 97 S.Ct. 451, 457 (1976) (statute that allowed females to purchase beer at age 18 but required males to be 21 violated the Equal Protection Clause).

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[5] Fundamental rights include the right to vote, the right of interstate travel, First Amendment rights and the right to procreate. See, *Friedman v. Beam*, 558 F.2d 1107, 1112 (2nd Cir. 1977).

Finally, social and economic legislation that does not employ suspect classifications based on race, gender, national origin and that does not impinge on a fundamental right will be considered valid, provided the legislative means used are *rationally related* to a *legitimate* governmental purpose. See, *Cleburne Living Center,* 473 U.S., 440; *Hodel v. Indiana,* 452 U.S. 314, 331, 101 S.Ct. 2376 (1981). Further, such legislation is presumed to be rational and reasonable and that presumption can be overcome only by a clear showing of arbitrariness and irrationality. *Hodel,* supra, at 331-32; see, *Sanchez v. State of Iowa,* ___ N.W.2d ___, 2005 WL387546, page 3 (Iowa 2005).

Zoning ordinances designating residential districts and defining a family unit deal with economic and social legislation, not with a fundamental interest or a suspect classification. *City of St. Joseph v. Preferred Family Healthcare, Inc.,* 859 S.W.2d 723, 728 (Mo.App. W.D. 1993); see also, *Village of Belle Terre v. Boraas,* 416 U.S. 1, 8, 94 S.Ct. 1536, 1540 (1974). Accordingly, the test of the constitutionality of such an ordinance is whether the ordinance is reasonable and not arbitrary and whether the ordinance bears a rational relation to a permissible governmental objective. *Id.*

Village of Belle Terre v. Boraas, decided by the United States Supreme Court in 1974, foreclosed for all practical purposes any Fourteenth Amendment challenge to zoning ordinances such as § 29.201(62). See, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974);

Annotation, "Validity of ordinance restricting number of unrelated persons who can live together in residential zone." 12 A.L.R.4 238, § 2(a). The *Belle Terre* holding made it clear that zoning ordinances that restricted the number of unrelated persons who could live together in a residential zone did not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Belle Terre v. Boraas,* 416 U.S. 1, 9, 94 S.Ct. 1536, 1541.

ARPA appears to concede as much, but it points to the Supreme Court's subsequent decision in *Moore v. East Cleveland,* 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed. 531 (1977) to support the proposition that *Belle Terre's* applicability has been "severely limited."[6] I disagree with that proposition.

In *Moore* the Supreme Court struck down an ordinance that limited residency to certain categories of related persons, essentially children and parents, but excluded members of an extended family. *Moore* did not overrule or limit *Belle Terre*; instead the court was careful to point out the difference between the two situations: "But one overriding factor sets this case apart from *Belle Terre.* The ordinance there affected only unrelated individuals. It expressly allowed all who are related by 'blood, adoption, or marriage' to live together, and in sustaining the ordinance we were careful to note that it promoted 'family needs' and 'family values.'" (Citation omitted).

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[6] See page 4, ARPA's brief.

East Cleveland, in contrast, has chosen to regulate the occupancy of its housing by slicing deeply into the family itself. This is no mere incidental result of the ordinance. On its face it selects certain categories of relatives who may live together and declares that others may not." *Moore,* 431 U.S. 498, 499. In the case at bar, the City of Ames has not undertaken to categorize within the family itself. The situation is exactly that as presented in *Belle Terre* and *Belle Terre* remains good law.

To summarize on this point, ARPA has no valid complaint recognized under the United States Constitution and specifically its Fourteenth Amendment Equal Protection Clause. On this aspect, the City is entitled to summary judgment.

IV. *Equal Protection – State Constitution.* ARPA also claims that the residency restriction imposed by 29.201(62), A.M.C., also violates the Constitution of the State or Iowa, specifically Article I, Section 6. That enactment provides "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizens, or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens." *Id.*

This aspect of ARPA's claim presents the closest call in this case. However, after reviewing the competing lines of cases that have developed around this issue; I am convinced that § 29.201(62) does not violate our state constitution.

The Iowa Supreme Court has not previously examined this issue (but I'm sure it soon will). The appellate courts of a goodly number of other states have dealt with the question, however, and ordinances quite similar to § 29.201(62) have been found both to be valid and invalid.

Several courts have decided that zoning ordinances limiting the number of unrelated persons who may reside together in a single residential unit do not violate the equal protection clauses of their state constitutions. See, Annotation, "Validity of ordinance restricting numbers of unrelated persons who can live together in residential zone" 12 A.L.R.4 238, § 3(b). A fair number of other courts, however, have held that such zoning restrictions did indeed violate their state constitutions. See, Annotation, supra, 12 A.L.R.4 238, § 4. For the most part, the latter line of cases concluded that the legislative distinction between related and unrelated residents was not sufficiently related to a permissible state objective. The author of the aforementioned annotation observed that "such courts appear to have adopted a test involving a more intrusive degree of scrutiny than the so-called 'rational relationship' test since it has been held by several state courts that a numerical limit on the number of unrelated persons did not 'substantially' assist in the achievement of the legislative goals." 12 A.L.R.4 238, § 2(a).

As noted above, federal equal protection challenges invoke different levels of judicial scrutiny

depending on the classifications drawn and the nature of the rights affected by the statute or ordinance. See, *Cleburne Living Center,* 473 U.S., at 440. The same type of analysis is generally used when assessing an equal protection claim brought under the Iowa Constitution. See, *Racing Association of Central Iowa v. Fitzgerald,* 675 N.W.2d 1, 7 (Iowa 2004); *Johnson v. Lewis* 654 N.W.2d 886, 890 (Iowa 2002). And, as is the case with federal law, Iowa law directs that legislation of a social and economic nature will be assessed for constitutional validity using the lowest level of judicial scrutiny, the "rational basis test." See, *Sanchez v. State of Iowa,* ___N.W.2d___, 2005 WL 387546, page 7 (Iowa 2005), citing *Cleburne Living Center, Inc.,* 473 U.S., at 440, 105 S.Ct., at 3254.

Exactly what does the "rational basis test" obligate a reviewing court to do? According to our state supreme court, there are three aspects a reviewing court must examine when applying the rational basis test against a given statute or ordinance. The reviewing court must (1) assess whether the governmental unit had a plausible policy reason for the challenged classification; (2) determine whether the reasons for the disparate treatment have a basis in fact; and (3) examine whether the relationship between the classification and. its goal "is so attenuated as to render the distinction arbitrary or irrational." *Racing Association of Central Iowa,* 675 N.W.2d, at 7, quoting *Fitzgerald v. Racing Association,* 539 U.S. 103, 123 S.Ct. 2156, 2159, 156 L.Ed.2d 97, 103 (2003). Finally,

the reviewing court must keep in mind that an ordinance is accorded a strong presumption of constitutionality and a person who challenges that ordinance must negate every reasonable basis that might support the disparate treatment meted out by the enactment. See, *Racing Association of Central Iowa,* 675 N.W2d, at 8.

The classification in this case flows from the definition of the term "family" provided in § 29.201(62), A.M.C.. Because of that definition, only three unrelated people may reside together in a single-family dwelling located in a residential low-density zone within the City of Ames. Under that same definition, however, five, ten, fifteen or more people could legally reside in the same single-family dwelling unit provided they were all related by blood, marriage, adoption, a guardianship or other duly-authorized custodial relationship.

Viewing that differentiation from ARPA's perspective, an ARPA member could legally rent his or her single-family dwelling to a family of ten related people without fear of sanctions, but leasing the same unit to four unrelated people would put the member in jeopardy of substantial civil penalties (and it appears that one or more members of ARPA have been on the receiving end of this reality). Accordingly, ARPA argues that the classification is arbitrary and irrational.

My task then is to decide whether the Ames City Council had a plausible policy reason for treating

unrelated people who reside together in a single-family dwelling unit differently than related people; whether the reasons proffered for the disparate treatment are factually based; and, finally, whether the classification employed has some reasonable and rational relationship to the ends sought to be obtained. See, *Racing Association of Central Iowa,* 675 N.W.2d, at 7-8. While the standard of review employed in these types of cases is considerably deferential to the City, the review is definitely something more than a rubber stamp approval process. *Id.*, at 9.

The City outlined a number of interests that it purportedly intended to advance by differentiating between groups of related and unrelated residents of a single-family dwelling unit. Specifically, the City referred to the "preservation of peaceful neighborhoods with limited congestion and traffic" and promotion of the "sanctity of the family, quiet neighborhoods, low population, few motor vehicles and tow transiency."[7] The City also noted its goal of preserving the quality of family neighborhoods as a plausible basis for creating a disparate classification found in § 29.201(62), A.M.C.[8]

Additionally, Chapter 29 of the Ames Municipal Code states in its preamble that the ordinance's

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[7] See page 6, City's brief in support of its motion for summary judgment.

[8] See page 4, City's supplement brief in support of summary judgment.

regulations and restrictions seek to "promote the health, safety and the general welfare of the City . . ." by avoiding undue concentration of population, overcrowding of land and other such factors. See, § 29(102)(1), A.M.C. The ordinance's preamble also notes that it was drafted with "reasonable consideration, among other things, as to the character of the area of each Zone and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City." *Id.*

Further, referring to various residential "base zones," § 29.700(1), A.M.C., advises that each of the various base zones "is designed and intended to establish the priority of residential uses by prohibiting uses detrimental to residential neighborhoods and allowing, through Special Use Permit with regulation of design, scale and location only those nonresidential uses that support and give vitality to residential life." *Id.* The espoused purpose for the residential low-density (RL) zone is "to accommodate primarily single-family dwellings, while accommodating certain existing two-family dwellings and other uses customarily found in low-density residential areas." § 29.701(1), A.M.C.

The United States Supreme Court in *Belle Terre,* supra, upheld an ordinance that had the effect of barring occupancy of single-family dwelling units by six unrelated college students and, in doing so, acknowledged that the ordinance advanced legitimate legislative goals such as minimization of population

and motor vehicle congestion and the maintenance of a quiet residential environment. *Id.*, 416 U.S. 9. Various other courts have also recognized as valid a municipality's concerns with quiet neighborhoods, low population, few motor vehicles and low transiency and have held that zoning ordinances such as § 29.201(62) were not unreasonable or arbitrary means to those ends. See e.g., *State v. Champoux,* 555 N.W.2d 69, 73 (Neb. 1996); *Hayward v. Gaston,* 542 A.2d 760, 768 (Del. 1988); see also, *Bloomsburg Landlords Ass'n, Inc. v. Town of Bloomsburg,* 912 F.Supp. 790, 804 (M.D.Pa. 1995).

Other courts have been considerably less deferential to ordinances that restricted the number of unrelated people who could reside in a single-family dwelling.

In *College Area Renters and Landlord Asso. v. City of San Diego,* 43 Cal.App.4th 677, 50 Cal.Rptr.2d 515, 521 (1996), the California Court of Appeals, Fourth District, determined that the connection between policy goals of avoiding overcrowding, traffic, noise, pollution, etc., and the discriminatory ordinance employed to address those issues was so attenuated as to be arbitrary and irrational. That court noted that such recognizable ills are better dealt with by enforcement of criminal statutes and off-street parking requirements. *Id.*

The New York Court of Appeals concluded likewise in *McMinn v. Town of Oyster Bay,* 66 N.Y.2d 544, 549, 48 N.E.2d 1240, 1243, 498 N.Y.S.2d 128, 131

(1985), and similar attitudes were espoused In *State v. Baker,* 81 N.J. 99, 111, 405 A.2d 368; 373 (NJ. 1979) and *Distefano v. Haxton,* 1994 WL931006 (R.I.Super. 1994).

In *Distefano,* the Rhode Island Superior Court determined that a zoning ordinance quite similar to § 29.201(62), A.M.C., was based on a "flawed premise." The court believed that "the legislation operated on the assumption that if some unrelated individual sharing an apartment or house, be they students or otherwise, are rowdy and disorderly, then all unrelated persons necessarily act in that fashion and must be barred from residential zones. Elementary logic teaches us that while a specie may have the qualities of the larger genus it inhabits, the genus does not have all the characteristics of each and every specie that it contains." *Id.*, at 11-12.

My role in assessing the City of Ames' embattled ordinance is not that of a "super legislature" to assess the wisdom or desirability of the policy that underpins the ordinance. That being said, there is some validity in the rationale used in cases such as *State v. Baker,* supra, and *Distefano v. Haxton.* Keying off those cases, it can be credibly argued that the connection between the classification drawn in § 29.201(62), A.M.C., and the City's goals of reduced traffic, noise, congestion, litter, etc., is quite attenuated. As pointed out by the California appellate court in *State v. Baker* " . . . one can envision a scenario of irrational differential treatment arising between two neighboring residences – one tenant occupied and the other owner

occupied – with the tenant occupied house being subject to the ordinance even though its residents happen to be the quiet, neat type who use bicycles as their means of transportation, whereas the owner-occupied house is not subject to the ordinance, even though its residents happen to be of a loud, litter-prone, car-collecting sort." 50.Cal.Rptr.2d 521, 43 Cal.App.4 686-87.

Be that as it may, I do not find it necessary to inject my own perspectives on whether concerns over traffic, noise, litter, etc., present plausible bases for the municipal enactment at issue. Instead I find the City's policy and goal of maintaining the nature and quality of single-family neighborhoods to be valid and supported in fact.[9] Maintaining the single-family character of a neighborhood is a legitimate public interest. See, *Jones v. Wildgen,* 320 F.Supp.2d 1116, 1131 (D.Kas. 2004). I further find that the classification presented in § 29.201(62) definitely falls among the various rational and reasonable means to achieving that end.

The United States Supreme Court in *Village of Belle Terre* noted that a city's " . . . police power is not

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[9] The Iowa Supreme Court does not obligate me to find "proof in the traditional sense" with respect to the policies' bases and fact. I am obliged, however, to " . . . undertake some examination of the credibility of the asserted factual basis for the challenged classification rather than simply accepting it at face value." *Racing Association of Central Iowa v. Fitzgerald* 675 N.W.2d 1, 8 (footnote 4) (Iowa 2004).

confined to elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Id.*, 416 U.S., at 9, 94 S.Ct., at 1541. A municipality is certainly entitled to consider the quality of living in its community and may exercise its police power to attempt to promote values important to the community as a whole. See, *State v, Champoux,* 555 N.W.2d 69, 74. "The objective of preserving the character of single-family residential neighborhoods is, we think, a legitimate one." *Anderson v. Provo City Corp.* ___P.3d___, 2005 WL120508 (Utah 2005), page 21.

Getting to the point, the City of Ames is certainly entitled to create within its boundaries specific environments that will aid in the preservation of family values and a traditional neighborhood setting. In pursuit of those environments the Ames City Council determined that allowing more than three unrelated people to reside in a single-family dwelling might have some deleterious effect on the aforementioned goals. Whether the classification imposed by § 29.201(62) is the best and most logical means of reaching the stated ends or whether there are better ways to address the City's concerns is not for me to say. The bottom line here is that ARPA failed to demonstrate that the connection between the City's ordinance and its stated goal is irrational, arbitrary or capricious. Accordingly, ARPA's state constitutional challenge must fail as well, and the City's summary judgment motion on this aspect will be granted.

V. *The "Takings" Claims.* – ARPA's brief and resistance to the City's summary judgment motion did not address the City's request for summary disposition of ARPA's claims based on the "Takings" Clauses found in the state and federal constitutions. Rather than view that silence as an abandonment of the claims, however, I will address those issues on their merits.

Paragraph 14 of ARPA's petition claims that "The City's enforcement of the ordinance [§ 29.201(62)] violates the Takings Clause of the Iowa and United States Constitutions."

The Fourteenth Amendment to the United States Constitution prohibits the taking of private property for public use without just compensation. The Iowa Constitution has a similar provision providing that "Private property shall not be taken for public use without just compensation first being made . . . " Article I, Section 18, Iowa Constitution.

A common form of "taking" occurs when a governmental body appropriates through its powers of eminent domain private property for a public purpose, or otherwise occupies some or all of it permanently. See, *Molo Oil Co. v. City of Dubuque,* ___N.W.2d___, 2005 WL379800 (Iowa 2005). A taking can also occur through extreme regulation by ordinance or statute to the extent that the owner is substantially deprived of the property's use and benefit. See, *Kelley v. Story County Sheriff,* 611 N.W.2d 475, 479 (Iowa 2000); see also, *MacDonald,*

Sommer & Prates *v. Yolo County*, 477 U.S. 340, 347, 106 S.Ct. 2561, 91 L.Ed.2d 285 (1986); *Jones v. Wildgen,* 320 F.Supp.2d 1116, 1134 (D.Kan. 2004). Be that as it may, a mere deprivation of the property's highest and best use won't render the governmental action an unconstitutional taking. *Stone v. City of Wilton,* 331 N.W.2d 398, 404 (Iowa 1983).

The summary judgment record on this aspect is quite meager and, as noted above, ARPA did not field a resistance to the City's claim that no factual issues existed on this aspect of the lawsuit. Likewise, there is a question on my part whether ARPA's "taking" claims are ripe for adjudication. One must exhaust any administrative remedies prior to bringing. such a claim. See, *Molo Oil Co.,* supra; *Iowa Coal Mining v. Monroe County.* 555 N.W.2d 418, 432-34 (Iowa 1996).

Be that as it may, and after considering the claim and the City's argument posed in resistance, I am comfortable in finding that while § 29.201(62) does impact to some degree ARPA members' ability to lease their properties, that ability has not been entirely or substantially extinguished. Indeed, there has been no demonstration that ARPA members are unable to rent their property to individuals who do qualify as a "family" under the challenged ordinance.

In short, ARPA's claims based on state and federal "takings" constitutional clauses are without merit.

VI. *The 42 U.S.C. 1983 Action.* As was the case with the "takings' claim, ARPA raised no resistance to

the City's request for summary judgment on this portion of the lawsuit. Accordingly, I will not spend a great deal of time analyzing the claim's merits.

Suffice it to say that 42 U.S.C. 1983 allows individuals in a civil action to recover monetary damages based on a deprivation of civil rights "under color of any statute, ordinance, regulation, custom, or usage of any state . . . " *Id.* To prevail in an action under 42 U.S.C. 1983, the plaintiff must obviously prove a violation of an underlying constitutional right. *Bailey v. Lancaster,* 470 N.W.2d 351, 356 (Iowa 1991).

Based on my foregoing conclusion that neither Plaintiff ARPA nor its members suffered any violation of their constitutional rights at the hands of the City of Ames, ARPA has no entitlement to damages or any other relief or redress offered under 42 U.S.C. 1983. That claim will be dismissed as were the others.

VII. *Summary.* In the context of this lawsuit, § 29.201(62), A.M.C., did not and does not violate ARPA's state and/or federal constitutional right to equal protection of the laws. Further, § 29.201(62), A.M.C., did not and does not violate the takings clause of either the Iowa or the United States Constitution to the extent that ARPA members are now entitled to compensation. Finally, in absence of a constitutional violation, ARPA's claims brought pursuant to 42 U.S.C. 1983 are not valid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the City of Ames' summary

judgment motion will be granted in all respects and the Plaintiff's petition will be and it is hereby dismissed at Plaintiffs cost.

Dated: March 16, 2005.

/s/ William J. Pattinson
WILLIAM J. PATTINSON, JUDGE
SECOND JUDICIAL DISTRICT

Clerk to provide copies to:
Thomas G. Fisher, Esq.
Kirke C. Quinn/C. Ann Jordan, Esqs.
John R. Klaus, Esq.